O/B.R.O./51

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Legal Deptt.

G. BRANCH

Subject:— Opinion on the Bombay Rationing order 1951

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C O N T E N T S

Legal Department File No. O.B.R. O. /51

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Bombay Rationing Order.	
1.	G- 173 4-1-51	Whether the Bakers' bread prepared out of whole meal wheat flour or/ imported wheat flour is also a rationed article along with the bread prepared out of the fortified whole meal wheat flour in view of the fact that the preparation of bread out of flour other than fortified whole meal wheat flour has been banned under the B'bay Bread (Control and Maximum Prices), order, 1944, and if so 2) Whether the sale of such a bread otherwise than on ration document is prohibited under cl. 6 of the Rationing order, 1943.	1-2
2.	G-290 19-9-51	Re: Prosecution for offence under cl. 16 of the Rationing order and Cl. 9 read with Cl. 13 of the same order	3-4
3.	G.425 14-9-51	Whether Govt. can suspend or/ cancel the authorization issued to the A.R.D. under cl3(3) or cl. 3(2) of the order.	5-8

Mjr/25/7
5 Cs.

Legal Department

Caluse 6 of the Bombay Rationing Order, 1943, provides that no authorised retail distributor or authorised establishment shall supply, offer or attempt to supply any rationed article except for household consumption and except under and in accordance with the provisions prescribed by or under the said Order. Caluse 43/56 of the City of Bombay Rationing Regulation, 1943 Bombay Suburban District Rationing Regulation, 1945 provides for the supply of bread to holders of bread tickets only on production and surrender of such tickets, Bread tickets are rationed documents under clause 38/51 of the said Rationing Regulations. Under Government Notification, Civil Supplies Department No. C.R. 68 dated the 25th March 1943, baker's bread or loaf (including toast) is a rationed article. The expression 'baker's bread' in the two Rationing Regulations has been defined in a similar way i.e. as meaning baker's bread or loaf including toast. Neither the Bombay Rationing Order, 1943 nor the City of Bombay Bombay Suburban District. Rationing Regulation, 1943, provides for preparing bread out of any specified wheat flour. A baker cannot therefore supply bread of any kind to any person except against the production of a bread ticket.

However, under clause 3 of the Bombay Bread (Control and Maximum Prices) Order, 1944, a baker is prohibited use in the preparation of bread of any flour other than fortified wholemeal wheat flour in preparing bread, he would be liable for contravening this provision, but the bread so prepared out of any flour other than fortified wholemeal wheat flour would not cease to be bread within the meaning of clause 2(3) of the Order. Consequently, under the provisions of the said caluses 43/56 City of Bombay Bombay Suburban District Rationing Regulation, 1943, a

a baker cannot sell any kind of bread, whether it is prepared out of fortified wholemeal wheat flour or not to any person except on the production of a bread ticket. The view expressed by Rationing Officer (Legal) in this connection is correct.

Sd/- B.D. Mirchandani

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Additional Secretary to Government.

U.R. to C. of R., No. G. 173, dated the 4th May 1951

Mjr/25/7

4 Cs.

Legal Department.

As regards the offence under caluse 16 of the Bombay Rationing Order and caluse 9 read with caluse 13 of the Bombay Rationing Order Shri Shetty is liable. The Foodgrains R tion Permit for the 'Jai Hind Cafe de Luxe' was issued in the name of Mahomed Gulam Hussein and Alli Satar as the owner and p erson in charge. Under an agreement the owner Haji Mahomed has given the said hotel to Shri Shetty for managing it for a period of 5 years and the consideration for it is that Shri Shetty should pay reyalty to him of Rs. 291 per month. This agreement is silent on the point of transfer of the foodgrains permit but under condition 6 of the agreement the manager i.e. Shri Shetty is required to spend from his own pocket for purchasing provisions and other things required for conducting the Restaurant. It is, therefore, clear that he is using the ration permit unauthorizedly in contravention of caluse 16 of the Bombay R tioning Order. Caluse 19 of the City of Bombay Rationing Regulation 1943, issued under caluse 12 of the Bombay Rationing Order, 1943, provides that a ration permit for obtaining rationed articles for the purposes of the establishment shall be issued in the name of the person in charge of an authorized catering establishment and caluse 13 of the Bombay Rationing Order provides that a ration document is abailable for lawful use only when it is used by the person in respect of whom it is issued or on his behalf by any person etc. Caluse 9 of the Bombay Rationing Order provides that a rationed article shall be obtained only by means of a ration document available for lawful use. As rations were obtained by Shri Shetty against a ration document which was not available to him for lawful use he has committed an offence under caluse 9 read with caluse 13 of the Bombay Rationing Order. He has also used a r ation document in contravention of the provision of the Bombay Rationing Order and has hence committed as

offence under caluse 16 of the Bombay Rationing Order.

So far as the proprietor Haji Mahomed is concerned, he is liable only under caluse 16 of the Bombay Rationing Order for transferring the ration document issued to him. It is true that the rations are being used for the same hotel for which it is issued but as under caluse 19 of the City of Bombay Rationing Regulation read with caluse 13 of the Bombay Rationing Order it is clear that the ration permit is issued in the name of the person in charge of the hotel who can alone use it, transferring such a permit for use to another is a transfer of the ration document even though on the document itself no such transfer is shown (Olease see R.L.A.'s opinion dt. 12-8-50)

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government.

U.R. to C. of R., No. E- 290, dated the 19th July 1951.

Mjr/25/7

4 Cs.

Legal Department

The question for R.L.A's consideration is whether Government can suspend or cancel the authorisation issued to the A.R.D. No. 40 under caluse 3(3) or caluse 3(2) of the Bombay Rationing Order, 1943.

As regards taking action under caluse 3(2) of the Bombay Rationing Order, 1943 R.L.A. has given an opinion under his No. 8265 dated the 7th November 1945 that the authorisation granted under caluse 3(1) can be cancelled under caluse 3(2) for the breach of the Rationing Order or Regulation thereunder but not for any other reason such as breach of any other Control Order. (The same view was taken with respect to charcoal licences under R.L.A.'s No. G-179, dated the 9th May 1951). Caluse 3(3) was added to the Bombay Rationing Order on 30th January 1946 i.e. after the above opinion was given. This caluse provides that notwithstanding anything contained in this caluse, the State Government may, without giving any previous notice or without assigning any reason, suspend or rescind the authorisation issued under this caluse. Such a caluse was proposed to be inserted in the Bombay Cotton Cloth Dealers Licensing Order, 1949 but it was then held that such a caluse would be void as it would be in contravention of caluse (2) of article 13 of the Constitution. In this case it is proposed to cancel the authorisation of A.R.D. No. 40 on the ground that he is expelled from the membership of the Masalawala Grain Merchant's Association which is a member-Association of the Indian Grain Dealer's Federation. As the A.R.D. has not committed any breach of the Rationing Order or Regulation thereunder it would not be quite legal and proper to cancel the authorisation.

Under para 5 of the undertaking between Government and the A.R.D. he has agreed to the cancellation of his authorisation f r any contravention by him of the

provisions or the directions issued under the Bombay Rationing Order, 1943, the Foodgrains Control Order, 1947, the Bombay Retail Trade Control and Licensing Order, 1947 and the Rationing Regulations or the undertaking or for false decalration in respect of item 7 in the undertaking. Even in the notes below the authorisation form, it is made clear in item (5) that the holder of the authorisation shall be liable to legal holder of the authorisation shall be liable to legal or departmental action or both as the case may be for any~~of~~ contravention of the Bombay Rationing Order, 1943, the Rationing Regulation issued thereunder or the directions issued under the said Regulation.

In view of all these provisions contained in the law, the form of undertaking and the form of authorisation, it would not be proper or strictly legal to cancel the authorisation only because the A.K.D. is expelled from the Federation.

It is true that according to the scheme followed by the Controller of Rationin,'s office the A.R.D's are to be authorised only on the recommendation of the Federation and that the mohadla system is followed by the Federation with a view to see that non A.R. D~~e~~ister members also get their share of the profit but as this arrangement is purely executive and has no legal sanction cancellation of authorisation on the recommendation of the Federation would not be valid.

Another course suggested by the Rationing Officer (Legal) is not to renew the authorisation when it expires on 31st December 1951. There is no legal objection to follow this course although from the form of authorisation it is clear that such renewal is generally granted as a matter of course.

The A.K.D. has filed a suit against the Federation and the Masalawala Association for a declaration that the Resolution expelling him from their membership is ultra

vires, void, inoperative and malafide and not binding on him. This should not, however, come in the way of Government refusin to renew his authorisation.

Sd/- B.D. Mirchandani

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Additional Secretary to Government.

U.R. to S. of R., No. G- 425, dated the 14th September '5

Mjr/25/7

4 Cs.